

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Griffin Sherbert	Team: Squad #7	CCRB Case #: 201909264	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 09/28/2019 10:30 AM, Saturday, 09/28/2019 4:10 PM	Location of Incident: 1.) 44th Precinct stationhouse--2 East 169th Street; 2.) BX Central Booking--215 East 161st Street	Precinct: 44	18 Mo. SOL 3/28/2021	EO SOL 11/12/2021	
Date/Time CV Reported Fri, 10/18/2019 5:00 PM	CV Reported At: CCRB	How CV Reported: Mail	Date/Time Received at CCRB Wed, 10/23/2019 5:11 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Kirk Williams	00621	934257	BX CT
2. POM Jose Gonzalez	11703	941830	044 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Onyx Salvador	22056	959962	044 PCT
2. POF Ofelia Mero	06897	954131	044 PCT
3. POM Victor Munoz	02296	965810	044 PCT
4. SGT John Debenedetto	03874	900818	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Jose Gonzalez	Force: At the 44th Precinct stationhouse, Police Officer Jose Gonzalez used physical force against § 87(2)(b)	
B.SGT Kirk Williams	Abuse: At Bronx Central Booking, Sergeant Kirk Williams forcibly removed § 87(2)(b) to the hospital.	

Case Summary

On October 21, 2019, § 87(2)(b) appeared at the CCRB and provided the following written complaint.

On September 28, 2019, at approximately 10:30 a.m., § 87(2)(b) entered the 44th Precinct stationhouse in the Bronx, to inquire generally about the Right to Know Act. Afterward, § 87(2)(b) exited the stationhouse, made a phone call, and Police Officer Jose Gonzalez of the 44th Precinct pushed § 87(2)(b) while he was entering (**Allegation A: Force-Physical Force, § 87(2)(g)**). § 87(2)(b) was arrested, charged with criminal trespassing and obstruction of governmental administration, and refused to be fingerprinted. Several hours later, § 87(2)(b) was transported to Bronx Central Booking by Police Officer Victor Munoz and Police Officer Onyx Salvador of the 44th Precinct.

At Bronx Central Booking, § 87(2)(b) continued to refuse to be fingerprinted, and Sergeant Kirk Williams of Bronx Court Section directed him to be removed to § 87(2)(b) for a psychiatric evaluation (**Allegation B: Abuse of Authority-Forcible Removal to the Hospital, § 87(2)(g)**).

The investigation obtained (15) stationhouse videos from the 44th Precinct stationhouse and Bronx Central Booking, and well as nine Body-Worn Camera (“BWC”) videos from the officers involved in this case.

Findings and Recommendations

Allegation A—Force: At the 44th Precinct stationhouse, Police Officer Jose Gonzalez used physical force against § 87(2)(b)

On October 21, 2019, § 87(2)(b) appeared at the CCRB and hand delivered a lengthy written complaint detailing this incident (BR01), to which he provided a sworn statement to on October 24, 2019 (BR02).

§ 87(2)(b) stated (BR02) that on September 28, 2019, at approximately 10:30 a.m., he went to the 44th Precinct stationhouse to see if the officers there had Right to Know Act business cards. During the interview, § 87(2)(b) clarified that he had not requested any business cards from any particular officers at the 44th Precinct stationhouse, but rather, wanted to see if the officers had them for his own research.

After becoming frustrated with an officer’s knowledge of the Right to Know Act, § 87(2)(b) called Governor Andrew Cuomo within the stationhouse lobby, and began to leave a voicemail message for him. An officer told § 87(2)(b) that he could not be on the phone within the stationhouse, and so he stepped outside to finish his call.

§ 87(2)(b) stated that while on the phone he stood next to the open entrance door outside the 44th Precinct stationhouse, and was not blocking the doorway. An officer, identified through the investigation as PO Gonzalez, approached from outside, and told § 87(2)(b) that he wanted to get through. § 87(2)(b) replied, “You have my permission, you can pass by.” § 87(2)(b) insisted that he was not blocking the entrance to the stationhouse, and that PO Gonzalez had enough room to pass by without making physical contact with him. As § 87(2)(b) was concluding his phone call and putting his phone away, PO Gonzalez suddenly “bulldozed” his way into the stationhouse, using his right shoulder to push against § 87(2)(b)’s right shoulder, and causing him to be pushed back and slightly stumble into the stationhouse.

The investigation obtained four videos from the 44th Precinct stationhouse, one of which, the Interior Lobby camera (BR03) captures the allegation above, and the relevant sections of which are detailed as follows.

At the 35:10 minute mark of the video (BR03), § 87(2)(b) is seen standing at a black gate at the top left of the frame, that separates the civilian area from the MOS area within the 44th Precinct stationhouse. § 87(2)(b) takes out his cell phone and appears to make a phone call. At the 35:24 minute mark, in apparent response to an unseen officer, § 87(2)(b) walks away from the gate, and stands just inside the vestibule of the front entrance to the stationhouse, directly in the

path of the open door while on the phone. § 87(2)(b) remains on the phone and in the path of the doorway to stationhouse until the 37:15 minute mark of the video, wherein PO Gonzalez is seen carrying a duffel bag and approaching the stationhouse entrance. PO Gonzalez stops within the vestibule as § 87(2)(b) is still on the phone, standing directly in the path of the open door, preventing him from entering. At the 37:20 minute mark, § 87(2)(b) is seen gesturing at PO Gonzalez, indicating that he is on the phone, and does not move from the path of the entrance. At the 37:25 minute mark, PO Gonzalez places his hand on § 87(2)(b)'s back, guides him away from the entrance, toward the area left of frame by the gate, and enters behind him. § 87(2)(b) remains on the phone, and after PO Gonzalez enters, returns to standing in the direct path of the stationhouse entrance, just inside the vestibule.

After PO Gonzalez pushed past him and entered the 44th Precinct stationhouse, § 87(2)(b) returned to standing in the path of the doorway. A few moments later, Sgt. Debenedetto, PO Mero, and PO Gonzalez approached § 87(2)(b) grabbed him, and placed him under arrest for criminal trespassing.

Arrest Report #§ 87(2)(b) (BR04) prepared by PO Mero in regards to § 87(2)(b) in sum and substance stated that on the date and time of incident, § 87(2)(b) was on the phone while within the stationhouse, told multiple times to get off the phone, and that recording and phone usage was prohibited within the stationhouse. PO Mero further reported that § 87(2)(b) was ordered to leave the stationhouse, he refused, blocked the entrance of the stationhouse, and was arrested for criminal trespassing and obstructing governmental administration.

Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. If the force used is unreasonable under the circumstances, it will be deemed excessive and in violation of Department policy. Patrol Guide, Procedure 221-01 (BR16).

§ 87(2)(g)

§ 87(2)(g)

Allegation B—Abuse of Authority: At Bronx Central Booking, Sergeant Kirk Williams forcibly removed § 87(2)(b) to the hospital.

§ 87(2)(b) stated (BR02) that after his arrest processing, he was lodged in the holding cells for a few hours, wherein several officers requested to take his fingerprints, and each time he refused. § 87(2)(b) stated that he had wholly refused because he had not been charged with a crime, he had already provided his driver's license, and, in his opinion, there was no reason the officers needed his fingerprints. § 87(2)(b)'s fingerprints were not taken at the 44th Precinct stationhouse. Several hours later, § 87(2)(b) was transported to Bronx Central Booking ("BXCБ") by PO Munoz and PO Salvador.

At BXCБ, § 87(2)(b) was brought in front of Sergeant Williams at the desk, who told § 87(2)(b) that he had been brought to BXCБ, because he gave "the wrong name," and, "a Hispanic name," during his earlier arrest processing, which § 87(2)(b) denied. § 87(2)(b) also denied that Sgt. Williams told him which specific name he thought he had initially provided, and could offer no independent explanation for Sgt. Williams statement.

Approximately 45 minutes later, PO Munoz and PO Salvador escorted § 87(2)(b) back outside, and transported him to § 87(2)(b). § 87(2)(b) denied that he was told by any officer the reason why he was being taken to the hospital, and denied that he had requested medical attention while at the 44th Precinct stationhouse or BXC.B. § 87(2)(b) thought that Sgt. Williams made the decision to remove him to the hospital because he seemed to be in charge of PO Munoz and PO Salvador.

§ 87(2)(b) was held at § 87(2)(b) for approximately three hours, was not treated for any illness or injury and was not diagnosed with anything. During his interview, § 87(2)(b) provided the investigation with a copy of his discharge paperwork (BR05), which stated that, “As per NYPD, emotionally disturbed,” and listed his diagnosis as “Psychosis, unspecified type.” PO Munoz and PO Salvador transported § 87(2)(b) back to BXC.B.

§ 87(2)(b)'s medical records obtained from § 87(2)(b) (BR06), lists the chief complaint as, “AS PER NYPD, ‘EMOTIONALLY DISTURBED.’” The medical records further reported that § 87(2)(b) had a “past psychiatric history of psychotic disorders,” was brought in by “NYPD as an EDP,” and was presenting on the date of the incident with “likely paranoid delusions but without thought process or behavioral disorganization.” The medical records conclude that they found “no evidence of internal preoccupation or response to internal stimuli, no suicidal or homicidal ideation, [and] no signs or symptoms of mental illness warranting inpatient psychiatric hospitalization or further emergency department psychiatric treatment,” and cleared § 87(2)(b) for discharge back to NYPD custody.

The NYPD BADS Arraignment paperwork for § 87(2)(b)'s arrest (BR07), contains the following notes prepared by Sgt. Williams. At 4:14 p.m., § 87(2)(b) entered BXC.B and refused to be searched and fingerprinted as required. At 4:49 p.m., § 87(2)(b) was removed to hospital for psychiatric evaluation by PO Munoz. Additionally, PO Munoz's (BR08) and PO Salvador's (BR09) memo books both noted that they transported § 87(2)(b) to § 87(2)(b) for a psychiatric evaluation.

Despite the proceeding in the record, Sgt. Williams stated (BR10) that he directed PO Munoz and PO Salvador to remove § 87(2)(b) to the hospital solely because he had observed him “walking gingerly,” and did not know whether he was injured. Sgt. Williams could not recall any other reason why he decided to have § 87(2)(b) removed to the hospital, though noted that he had been refusing to comply with the intake process and wanted to make sure he was medically okay. Sgt. Williams added that he would not send someone to the hospital for refusing to comply with his orders or BXC.B procedures.

Sgt. Williams denied that he removed § 87(2)(b) to the hospital as an emotionally disturbed person, and did not believe that he was a danger to himself or other. After being presented with § 87(2)(b)'s discharge paperwork (BR05), Sgt. Williams still denied that he made the determination that § 87(2)(b) was “emotionally disturbed.” When presented with the NYPD BADS omniform (BR07) containing his own notes that recorded he directed § 87(2)(b) to be removed to hospital for psychiatric evaluation, Sgt. Williams dismissed them as a “clerical mistake,” denied that he removed § 87(2)(b) for a psychiatric evaluation, and denied that he removed him to the hospital as an EDP.

PO Munoz (BR11) and PO Salvador (BR12) each denied that they made the decision to remove § 87(2)(b) to the hospital, and each affirmed that he was removed to the hospital for a psychiatric evaluation after being deemed to be emotionally disturbed by a supervisor at BXC.B. While PO Salvador (BR12) stated that there was a concern § 87(2)(b) was a danger to himself or other, and PO Munoz (BR11) denied that was the case; both officers acknowledged that § 87(2)(b) was “upset” about being removed to the hospital and did not want to go. Additionally, while PO Munoz (BR11) could not recall whether Sgt. Williams or another supervisor made the decision to remove § 87(2)(b) for a psychiatric evaluation, PO Salvador stated (BR12) that Sgt. Williams directed him and his partner to remove § 87(2)(b) to the hospital as an EDP and that it was his decision alone.

The Patrol Guide defines an emotionally disturbed person as an individual who appears to be mentally ill or temporarily deranged and is conducting themselves in a manner which a police officer reasonably believes is likely to result in serious injury to themselves or others. Patrol Guide, Procedure 221-13 (BR13).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to three prior CCRB complaints.
 - § 87(2)(b)
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 -
- PO Gonzalez, a 13-year-member-of-service, has had seven prior CCRB complaints filed against him, with a total of eight allegations, none of which were substantiated (see Officer History). § 87(2)(g)
- Sgt. Williams, a 16-year-member-of-service, has had three prior CCRB complaints filed against him, with a total of four allegations, none of which were substantiated (see Officer History).

§ 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- As of February 12, 2020, § 87(2)(b) has not filed a Notice of Claim with NYC Comptroller's Office with regard to this incident (BR14).

- § 87(2)(b)
- (BR15).

Squad No.: 7

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date